

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHARLES O'CAIN,

**Plaintiff,**

Case No. C05-2124-JCC-MAT

V.

## REPORT AND RECOMMENDATION

STEPHANIE MURRAY, *et al.*,

## Defendants.

## INTRODUCTION AND SUMMARY CONCLUSION

15 This is a civil rights action brought under 42 U.S.C. § 1983. Plaintiff Charles O’Cain is  
16 a state prisoner who is currently confined at the Stafford Creek Corrections Center in Aberdeen,  
17 Washington. He seeks damages in this action for alleged violations of his constitutional rights  
18 arising out of his pretrial detention at the King County Regional Justice Center (“RJC”) in  
19 2005. Plaintiff identifies RJC Classification Officer Stephanie Murray and King County as the  
20 defendants in this action. Defendants now move for summary judgment.

21 Plaintiff has been advised of the summary judgment requirements pursuant to *Rand v.*  
22 *Rowland*, 154 F.3d 952 (9th Cir. 1998), but has filed no response to defendants' motion. The

01 Court, having reviewed the pending motion for summary judgment, and the balance of the  
02 record, concludes that defendants' motion for summary judgment should be granted and  
03 plaintiff's complaint, and this action, should be dismissed with prejudice.

04 BACKGROUND

05 On August 13, 2004, plaintiff was charged in King County Superior Court with one  
06 count of rape in the second degree. (Dkt. 56, Ex. A.) The state filed an amended information  
07 on January 4, 2005 charging plaintiff with one count of rape in the first degree and one count of  
08 attempted rape in the first degree. (*Id.*, Ex. B.)

09 In April 2005, corrections staff at the King County Department of Adult and Juvenile  
10 Detention ("DAJD") began investigating plaintiff's use of jail telephones to commit additional  
11 crimes including criminal impersonation, extortion, and phone harassment. (*See id.*, Ex. F,  
12 Certification for Determination of Probable Cause.) On April 28, 2005, plaintiff's phone  
13 privileges at the RJC were revoked by order of the King County Superior Court. (*Id.*, Ex. F,  
14 Order on Criminal Motion, 4/28/05.) The order restricted plaintiff's telephone access to one  
15 30 minute conversation with his attorney per week, a call which was to be supervised and  
16 approved by jail classification staff. (*See id.*) Plaintiff apparently made his attorney calls  
17 from defendant Murray's office, and in her presence, on several occasions. (*See* Dkt. 55 at 2.)

18 On September 8, 2005, plaintiff moved in his pending criminal action to modify the  
19 previously imposed telephone restrictions. (Dkt. 56, Ex. F, Order on Criminal Motion,  
20 9/8/05.) The King County Superior Court modified the restrictions to permit plaintiff one hour  
21 of telephone access to his attorney per week. (*Id.*) The court's order provided that plaintiff's  
22 attorney calls were to be unmonitored, though members of the corrections staff were permitted

01 to determine at the beginning and end of each call that plaintiff had contacted his attorney.  
02 (Dkt. 56, Ex. F, Order on Criminal Motion, 9/8/05.)

03 In April 2006, plaintiff moved in his criminal action to remove the telephone deadlock  
04 completely. (*Id.*, Order on Criminal Motion, 4/21/06.) The King County Superior Court  
05 denied the motion based on evidence that plaintiff had committed crimes while in jail. (*Id.*)  
06 the court noted in its order that it would not micromanage jail operations. (*Id.*) The court  
07 further noted that, per the jail's concession, plaintiff would be permitted to use his thirty minute  
08 weekly phone periods to have unrestricted use of the phone. (*Id.*)

09 Plaintiff filed this action in late December 2005 while he was awaiting trial in King  
10 County Superior Court. (*See* Dkt. 1.) In January 2007, defendants moved to stay this action  
11 pending full resolution of plaintiff's criminal proceedings. (Dkt. 36.) Plaintiff did not oppose  
12 the motion and, in March 2007, the undersigned granted the requested stay. (Dkt. 39.)  
13 Plaintiff's criminal trial commenced in February 2007. (*See* Dkt. 56, Ex. D.) At the time of  
14 trial, the state was permitted to amend the charges again, adding a count of assault in the second  
15 degree to the pending rape in the first degree and attempted rape in the first degree charges.  
16 (*Id.*, Exs. C and D.)

17 On the first day of trial, plaintiff filed a motion to dismiss the charges against him based  
18 on governmental misconduct. (*Id.*, Ex. E.) Among plaintiff's complaints were that his cell  
19 had been searched without a warrant and his legal materials had been reviewed by jail staff, that  
20 his telephone contact with his attorney was unduly limited and his calls were unlawfully  
21 monitored, and that his telephone calls had been unlawfully recorded. (*Id.*) The trial court  
22 held a hearing on plaintiff's motion to dismiss and, after taking evidence and hearing argument,

01 the trial court denied the motion to dismiss. (Dkt. 56, Ex. G.)

02 On March 16, 2007, plaintiff was found guilty on one count of rape in the second degree  
03 and he was sentenced on May 7, 2007 to a minimum term of 280 months confinement. (*Id.*,  
04 Ex. H.) Plaintiff appealed his judgment and sentence to the Washington Court of Appeals and  
05 on May 27, 2008, the Court of Appeals issued an opinion affirming plaintiff's conviction, but  
06 remanding the case to the trial court to strike one of the conditions of community custody  
07 imposed by the trial court which the Court of Appeals deemed improper. (*See id.*, Ex. I.).  
08 The Court of Appeals issued its mandate terminating direct review on July 25, 2008. (*See id.*)

09 In March 2013, plaintiff moved to lift the stay in this action. (Dkt. 48.) Defendants  
10 did not oppose the motion and, the stay was lifted in May 2013. (Dkt. 53.) Shortly after the  
11 stay was lifted, defendants file the motion for summary judgment which is now pending and  
12 ripe for review. (Dkt. 55.)

13 DISCUSSION

14 Plaintiff alleges in his civil rights complaint that defendant Stephanie Murray, a  
15 Corrections Program Specialist at the RJC, interfered with private phone calls between plaintiff  
16 and his attorney in his criminal case which was pending at the time plaintiff filed this action.  
17 (Dkt. 6 at 3.) Plaintiff further alleges that the King County Jail has a custom and policy of  
18 supervising all attorney calls for inmates on phone deadlock and that deadlock inmates  
19 therefore had no private call privileges with their attorneys. (*Id.*) Plaintiff asserts that  
20 defendants' violated his First Amendment right to freedom of speech, his Fourth Amendment  
21 right to privacy, his Sixth Amendment right to counsel, and his Fourteenth Amendment right to  
22 due process. (*Id.*)

01 Defendants argue in their summary judgment motion that plaintiff's claims are barred  
02 under *Heck v. Humphrey*, 512 U.S. 477 (1994). Defendants also argue that plaintiff is  
03 collaterally stopped from litigating his constitutional claims in this action because his claims  
04 were resolved in his criminal proceedings. This Court deems it necessary only to address the  
05 second of defendants' arguments.

## Summary Judgment Standard

7 Summary judgment is proper only where "the pleadings, depositions, answers to  
8 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no  
9 genuine issue as to any material fact and that the moving party is entitled to judgment as a  
10 matter of law." Fed.R.Civ.P. 56(c). The moving party has the burden of demonstrating the  
11 absence of a genuine issue of material fact for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.  
12 242, 257 (1986). In response to a properly supported summary judgment motion, the  
13 nonmoving party may not rest upon mere allegations or denials in the pleadings, but must set  
14 forth specific facts demonstrating a genuine issue of fact for trial and produce evidence  
15 sufficient to establish the existence of the elements essential to his case. See Fed. R. Civ. P.  
16 56(e).

## Collateral Estoppel

18 Defendants argue that plaintiff is precluded from litigating his constitutional claims in  
19 this § 1983 action because the claims were previously resolved in his state court criminal  
20 proceedings. It is well settled that “a federal court must give to a state-court judgment the  
21 same preclusive effect as would be given that judgment under the law of the State in which the  
22 judgment was rendered.” *Migra v. Warren City School Dist. Bd. Of Ed.*, 465 U.S. 75, 81. See

01 *also, Allen v. McCurry*, 449 U.S. 90 (1980); *Kremer v. Chemical Construction Corp.*, 456 U.S.  
02 461 (1982); *Haring v. Prosise*, 462 U.S. 306 (1983)). In *Allen*, the Supreme Court specifically  
03 held that § 1983 does not open the way for a litigant to re-litigate an issue that was previously  
04 decided in a state criminal proceeding.

05 The evidence submitted by defendants in support of their motion for summary judgment  
06 makes clear that plaintiff litigated his Fourth, Sixth, and Fourteenth Amendment claims relating  
07 to the telephone procedures at the RJC and defendants' alleged interference with his right to  
08 counsel in the motion to dismiss he filed in his state court criminal proceedings.<sup>1</sup> (See Dkt. 56,  
09 Ex. E.) Plaintiff did not allege in his motion to dismiss any violation of his First Amendment  
10 rights but, as defendants correctly point out, plaintiff has failed to state any cognizable First  
11 Amendment claim in these proceedings and, in any event, the claim appears to be based upon  
12 the same factual allegations asserted and resolved in plaintiff's criminal proceedings. This  
13 Court therefore concludes that plaintiff is precluded from pursuing any of his constitutional  
14 claims in this civil rights action.

15 //

16 //

17 //

18 //

19 //

20 //

21

---

22 <sup>1</sup> The Court notes that plaintiff himself drafted the motion to dismiss in his state court proceedings and  
his attorney adopted the motion and presented it in conjunction with defendants' trial memorandum. (See Dkt.  
56, Ex. E.)

## CONCLUSION

02 Based on the foregoing, this Court recommends that defendants' motion for summary  
03 judgment be granted and plaintiff's complaint and this action be dismissed with prejudice. A  
04 proposed order accompanies this Report and Recommendation.

DATED this 20th day of November, 2013.

Maegledlyn

---

Mary Alice Theiler  
Chief United States Magistrate Judge